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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 1, 2001

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

v.

CASE NO. PUE010072

AUBON WATER COMPANY,
Defendant

ORDER APPOINTING RECEIVER

On February 28, 2001, the Staff of the State Corporation Commission ("Commission") filed an Agreed Motion Requesting Appointment of Receiver. The Commission, having reviewed the Agreed Motion¹ and attached consent of Aubon Water Company ("Aubon") to the appointment of a receiver and the attached certification from the Virginia Department of Health, now finds that an emergency requires the appointment of a receiver. The Commission finds that the water utility has been grossly mismanaged and that Aubon has failed to comply with this Commission's orders, as found in the Report of Michael D. Thomas, Hearing Examiner, filed in Case No. PUE000567 on January 24, 2001. The Hearing Examiner's Final Report filed in Case No. PUE980628 on February 23, 2001, further reports that

¹ The Commission also takes judicial notice of Case Nos. PUE980628 and PUE990002 which are referred to in the Agreed Motion.

Aubon continues to provide inadequate water service to its Alton Park customers and that it has failed to comply with the Special Order of the Department of Health to provide adequate quality of drinking water to its Long Island Estates customers. For these reasons, this Commission concludes that an emergency exists.

NOW THE COMMISSION, upon consideration of the foregoing and the Staff's recommendation of a receiver, is of the opinion and finds that David G. Petrus should be appointed emergency receiver of Aubon upon posting a fiduciary bond of at least seventy thousand dollars (\$70,000). The Commission further finds that a hearing should be convened on March 28, 2001, at 10:30 a.m., following Notice given to all of Aubon's lienors and creditors, lien or general, to determine whether the emergency receivership should be extended and to review a Plan of Receivership to be filed as provided below. Aubon's lienors and creditors for the purpose of giving notice, shall be considered to be those individuals and entities listed by G. Ray Boone in Exhibit A of Staff's Agreed Motion.

IT IS ORDERED THAT:

(1) David G. Petrus is hereby appointed emergency receiver of Aubon and, upon posting a fiduciary bond in the amount of seventy thousand dollars (\$70,000), is vested, in addition to the powers set forth herein, with all the powers and authority

expressed or implied under the provisions of § 56-265.13:6.1 and of §§ 8.01-583 to -590 of the Code of Virginia.

(2) The Receiver is authorized to do all acts necessary or appropriate for the conservation or rehabilitation of Aubon including, but not limited to, the following:

- (a) to maintain immediate and exclusive possession and control of Aubon, including its assets, cash, bank accounts, contracts, causes of action, books, records and property, including such property of Aubon which may be discovered hereafter;
- (b) to acquire, invest, deposit, hypothecate, encumber, lease, improve, sell, transfer, or otherwise dispose of or deal with any of the assets and property of Aubon, including any real property;
- (c) to borrow money on the security of Aubon's assets, with or without security, and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the receivership;
- (d) to operate and transact business for Aubon;
- (e) to collect all debts and monies due and claims belonging to Aubon;
- (f) to enter into any contracts necessary to carry out this Order, and to affirm any contracts to which Aubon is a party;
- (g) to make distribution and payment to creditors and members as their interests may appear;
- (h) to receive, examine, and pass upon claims made against Aubon, and the authority to sue, intervene in, and defend any actions in the name of the Receiver or its agent or in the name of Aubon;

- (i) to remove any or all records and other property of Aubon to the offices of the Receiver or to such other place as may be convenient for the purposes of the efficient and orderly execution of the receivership; and to dispose of or destroy, in the usual and ordinary course, such of those records and property as the Receiver may deem or determine to be unnecessary for the receivership;
- (j) to assign, extend, discharge in whole or in part, or foreclose any mortgage of real or personal property standing in the name of Aubon individually or held by Aubon in any fiduciary capacity, and to subordinate the lien of any such mortgage to any other mortgage, lease, or other interest, and to initiate and to defend any action with respect to any such mortgage;
- (k) to sell, lease, convey, grant assessments or other interest in, enter agreements with respect to, and to initiate and defend any action with respect to any real estate acquired by Aubon individually or held by Aubon in any fiduciary capacity;
- (l) to sign, seal with the corporate seal, acknowledge and deliver all pleadings, affidavits, deeds, contracts, releases, discharges, certificates, leases, assents, grants and other instruments necessary or appropriate to carry out the foregoing powers, and such execution shall in each case be conclusive as to the authority of the executing officer;
- (m) to employ and fix the compensation of such employees, counsel, accountants, consultants, assistants, and other personnel as the Receiver considers necessary;
- (n) to change to the Receiver's own name the name of any of Aubon's accounts, funds, or other property or assets held with any bank, savings and loan association or other financial institution, wherever located, and to withdraw such funds, accounts, and other assets from such institutions

or take any lesser action necessary for the proper conduct of the receivership;

- (o) to perform such further and additional acts as the Receiver may deem necessary or appropriate for the accomplishment of or in aid of the purpose of the receivership.
- (p) to contract for and receive funding from the Virginia Department of Health, including the Drinking Water State Revolving Fund, and other sources as necessary to abate conditions threatening the public health or safety.

(3) The Receiver shall obtain the prior written approval of the Commission with respect to any action taken pursuant to subparagraphs (b), (c), (j), or (k) of paragraph (1) above.

(4) The current owners, officers, directors, trustees, agents, and employees of Aubon hereby are restrained from transacting any further business and are restrained from transferring, removing, or disposing of any property or business until further Order of the Commission.

(5) Aubon, its officers, directors, trustees, agents, and employees, and all other persons having any property or records belonging to Aubon, including data processing information and records of any kind, hereby are directed to assign, transfer, and deliver to the Receiver all of such property in whatever name the same may be held, and any persons, firms or corporations having any books, papers or records relating to the business of Aubon shall preserve the same and submit these to the Receiver for examination at all reasonable times.

(6) Until further order of the Commission, all persons, corporations, partnerships, associations and all other entities, wherever located, hereby are enjoined and restrained from interfering in any manner with the Receiver's possession of the property or its right therein and from interfering in any manner with the conduct of the receivership of Aubon, including wasting, transferring, selling, disbursing, disposing of, or assigning property or attempting to do so.

(7) No bank, savings and loan association or other financial institution shall, without first obtaining permission of the Receiver, exercise any form of set-off, alleged set-off, lien, or other form of self-help whatsoever or refuse to transfer property to the Receiver's control.

(8) All secured creditors or parties, pledge holders, lien holders, collateral holders, or other persons claiming secured, priority or preferred interest in any property or assets of Aubon, including any governmental entity, hereby are enjoined from taking any steps whatsoever to transfer, sell, encumber, attach, dispose of or exercise purported rights in or against the property. However, notwithstanding any other provision of this Order, the commencement of conservatorship, receivership, liquidation or other delinquency proceedings against Aubon in another jurisdiction by an official lawfully authorized to

commence such a proceeding shall not constitute a violation of this Order.

(9) No judgment, order, attachment, garnishment sale, assignment, transfer, hypothecation, lien, security interest or other legal process of any kind with respect to or affecting Aubon or its property shall be effective or enforceable or form the basis for a claim against Aubon or its property unless entered by the Commission or unless the Commission has issued its specific order, upon good cause shown and after due notice and hearing, permitting same.

(10) Except as otherwise specifically provided by law, the Receiver and his employees, counsel, accountants, consultants, assistants, and other personnel are deemed to be public officers acting in their official capacity on behalf of the state and shall have no personal liability for or arising out of their acts or omissions performed in good faith in connection with this or related proceedings or pursuant to this or related orders.

(11) The Receiver shall make quarterly reports to the Commission's Division of Energy Regulation to keep the Commission informed of the status of operations at Aubon's utility facilities and the status of Aubon's debts and to provide any other information that the Commission's Staff may request.

(12) The Receiver forthwith shall provide notice of the receivership to all of Aubon's customers. Such notice shall inform the customers that David G. Petrus has been appointed Receiver for Aubon and will now operate all of Aubon's utility systems. The notice also shall instruct the customers how, where, and when to submit payments for services rendered by the Receiver and provide information for customers to contact David G. Petrus in case of service difficulties. The notice shall also inform the customers that a Plan of Receivership will be made available, upon request, after being filed, and of the hearing scheduled to review the receivership and Plan, all as provided below. The notice shall be approved by the Commission's Office of General Counsel before being sent to customers.

(13) All costs, expenses, fees, or any other charges of the Receivership, including but not limited to fees and expenses of those persons listed in paragraph (1)(m) above and the giving of notice required herein, shall be paid from the assets of Aubon.

(14) The Receiver may at any time make application for such further relief as he sees fit, including any application for an increase in rates or for other changes to the terms and conditions and rules and regulations of Aubon's water services.

(15) The Receiver is authorized to deliver to any person or entity a certified copy of this Order, or of any subsequent order of the Commission, such certified copy, when so delivered, being deemed sufficient notice to such person or entity of the terms of such Order. But nothing herein shall relieve from liability, nor exempt from punishment by contempt, any person or entity who, having actual notice of the terms of any such Order, shall be found to have violated the same.

(16) The Commission Staff shall confer with the Receiver on a Plan of Receivership and they shall file a Plan of Receivership on or before March 16, 2001. The Staff shall serve copies of the Plan of Receivership by U.S. mail, postage prepaid, to all leinors and creditors of Aubon.

(17) Aubon Water Company, through its President, G. Ray Boone, is hereby ordered to transfer to the receiver, upon his qualification, possession and control of all property of the utility, and to assist the receiver in establishing customer billing so that the receiver can collect all further utility revenues.

(18) A hearing is hereby scheduled to be convened on March 28, 2001, at 10:30 a.m. in the courtrooms of the Commission to consider whether to extend this emergency receivership and to consider the Plan of Receivership filed by Staff.

(19) By copy of this Order Appointing Receiver, notice shall be given to the leinors and creditors of Aubon Water Company of this receivership and of the hearing scheduled for March 28, 2001, at 10:00 a.m. to consider extension of the receivership and the Plan of Receivership.

(20) This matter is continued generally.

This Order is effective as of 5:00 p.m., Thursday, March 1, 2001, and shall remain in effect until modified or withdrawn by the Commission, which shall retain jurisdiction for all purposes necessary to effectuate and enforce this Order.